

**ELECTRIC VEHICLE CHARGING STATION
FUNDING AGREEMENT**

between

KING COUNTY

and

THE CITY OF KIRKLAND

This Agreement is made and entered into this 20TH day of September, 2011 between KING COUNTY, through its Department of Transportation, referred to herein as the "County," a home rule charter county of the State of Washington, and the City of Kirkland, referred to herein as the "City."

Recitals

- A. The Puget Sound Clean Air Agency is the recipient of a grant from the United States Department of Energy (hereafter referred to as "DOE") Petroleum Reduction Technologies Projects for the Transportation Sector Program through the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5). The DOE grant number is DE-EE0002020 and the Catalogue of Federal Domestic Assistance Number for the DOE funding source is 81.086.
- B. The Puget Sound Clean Air Agency, through its Clean Cities program, issued a call for projects from its member jurisdictions with the intention to sub-grant funds from its DOE grant DE-EE0002020. The call for projects included design and construction funding for electric vehicle charging stations as one of the categories of projects that could be funded through this grant.
- C. The County partnered with the City on an application to fund the construction of electric vehicle charging stations at selected locations. The application included funds to help the City design and construct a total of five (5) electric vehicle charging stations at three separate identified locations. Total funding for the design and construction of the five electric vehicle charging stations for the City totaled \$53,000 in funding from the DOE grant.
- D. The Puget Sound Clean Air Agency through its Clean Cities program, selected the King County application for funding from their DOE grant. The County entered into an agreement with the Puget Sound Clean Air Agency to accept the funding, including \$53,000 in DOE funds for the City's five charging stations. The County's agreement with the Puget Sound Clean Air Agency is contract number 2011030 (hereafter referred to as "the Contract").
- E. To facilitate the installation of these charging stations called for in their application, and to provide the terms and conditions by which the County will reimburse the City for certain costs associated with their design and construction, the County is sub-granting DOE funds to the City and

the City agrees to utilize the funds for their intended purpose.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. SUB-GRANT OF DOE FUNDS

Through this Agreement, the County hereby agrees to sub-grant the City an amount up to, but not to exceed \$53,000 in DOE funds for the design and construction of five (5) electric vehicle charging stations. The source of these funds is the Contract between the County and the Puget Sound Clean Air Agency which is made a part of and incorporated by reference as Exhibit A to this Agreement.

SECTION 2. CITY RESPONSIBILITIES

A. The City agrees to construct five (5) level two electric vehicle charging stations as identified in Attachment A to the Contract which is Exhibit A to this Agreement. The five charging stations will be installed at the three locations identified in Attachment A of the Contract. The level two charging stations installed by the City will conform with the technical specifications listed in Attachment B of the Contract and will be fully operational and useable to charge electric vehicles or vehicles that can accept an electric charge from the specified charging stations.

B. The City shall be solely responsible for all work related to development of the electric vehicle charging stations contemplated by this Agreement, including but not limited to: (1) design work; (2) issuing and/or obtaining all permits, licenses, easements, and approvals necessary to perform the construction work; (5) construction work; and (6) contract administration and payment of all fees and costs. "Construction work" shall include, but not be limited to, all demolition, removal, excavation, production, construction, repair or other work necessary to develop the improvements.

C. The City agrees to pay for all costs associated with design and construction of the five (5) electric vehicle charging stations contemplated by this Agreement over and above the \$53,000 it will receive as reimbursement through this Agreement.

D. The City shall require any contractor(s) it hires to obtain and maintain primary coverage for Commercial General Liability, Professional Liability, Environmental Liability and Commercial Automobile Liability insurance in amounts required by the City for other construction projects of similar size and cost. All insurance shall include the City and the County and their officers, officials, agents, and employees as additional insured and shall contain "severability of interest" (cross liability) wording. The contractor's insurance shall be primary to and not contributing with any insurance or self-insurance, which may be carried by the County.

E. Upon completion of all improvements and their acceptance by the City, the title and ownership of same shall become the property of the City and the City shall thereafter be

responsible for their operation, use, cleaning, utilities, maintenance, repair and replacement as necessary for each improvement's useful life. The City may assign responsibility for tasks such as cleaning, maintenance, repair or replacement of some or all of the improvements to a third party.

SECTION 3. REIMBURSEMENT OF ELIGIBLE COSTS AND REPORTING

A. Payment of Funds Committed Under This Agreement

1. The City shall invoice the County for any DOE eligible costs incurred pursuant to this Agreement. The invoices shall be submitted on a monthly basis and will include supporting documentation as detailed in Section 3(C) of this Agreement. The invoices shall show the total amount expended during the billing period and will seek reimbursement of eligible costs from the County up to the maximum total reimbursable amount of \$53,000.

2. The amount up to \$53,000 paid to the City under this Agreement shall be grant funds from American Recovery and Reinvestment Act funds under grant number DE-EE0002020 provided by the DOE to the Puget Sound Clean Air Agency and sub-granted to the County under the Contract. The Puget Sound Clean Air Agency will reimburse the County only for eligible costs. "Eligible costs" are those costs that are incurred pursuant to this Agreement and the project description, budget and terms and conditions outlined in the Contract, attached as Exhibit A to this Agreement, and in accordance with OMB Circular A-87. Eligible costs on this project do not include overhead charges or indirect rates applied to direct charges.

3. Because of the County's use of federal funding, the City agrees to provide the County with two progress reports, City staff time reports and any contractor Davis-Bacon employment information in substantially the formats set forth in Attachments C, D and E to Exhibit A to this Agreement. The progress reports and other reports shall be supplied to the County on October 31, 2011 and November 20, 2011.

C. During the final design and construction of the improvements, the City shall submit documentation to support its invoices consisting of project expense reports from the City's financial system and invoices from any contractors and consultants documenting direct costs incurred by the City on this Project. This documentation is required by the County as a basis for seeking reimbursement from the Puget Sound Clean Air Agency for grant eligible expenses. The County shall review the City's documentation and apply appropriate grant eligible expenses to the Puget Sound Clean Air Agency sub-grant, and the County agrees to notify the City in a timely manner of any issues that arise with the documentation submitted by the City.

D. Within 20 days of its approval of an invoice from the City, the County shall reimburse the City for all approved, reimbursable project costs.

SECTION 4. COMPLIANCE WITH LAWS.

The City shall comply with all applicable federal, state and local laws and regulations in performing under this Agreement.

SECTION 5. LEGAL RELATIONS.

A. This Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship, or partnership is formed as a result of this Agreement. The employees of the City or individual providing paid or volunteer services to the City shall be considered the employees, volunteers, agents or representatives of the City and shall not be deemed, nor represent themselves, to be the employees, volunteers, agents or representatives of the County.

B. This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement between the County and City.

C. The City shall be solely and completely responsible for all acts and omissions of its employees, volunteers and all other such persons acting on its behalf. The City acknowledges that the County shall have no responsibility for overseeing or monitoring the performance of such persons.

D. To the maximum extent permitted by law, the City agrees to defend, indemnify and hold harmless the County and its officers, employees and agents from and against all liabilities, claims, actions, lawsuits, damages, losses, costs and expenses (including reasonable attorneys' fees and court expenses) for all injuries to or death of any person, repayment of grant funds, infringement of any patent or copyright, and/or damage to any property occurring, directly or indirectly, from the operation, maintenance, or use of the completed charging stations, or from the City's performance or failure to perform under this Agreement, whether or not resulting from the negligence of the City, except to the extent such injuries, infringements or damages result from the County's negligence or willful misconduct. If (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the City and the County or their respective contractor(s), employees, agents, or representatives, the indemnification of each party applies only to the extent of the negligence of that party, its contractor or employees, agents, or representatives. The City's obligations under this Section shall include, but not be limited to, claims and actions against the County and its officers, employees and agents by a volunteer to or an employee or former employee of the City, and the City expressly waives, as respects the County only and only for the limited purpose stated herein, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other workers' compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claims and actions.

E. To the maximum extent permitted by law, the County agrees to defend, indemnify and hold harmless the City and its officers, employees and agents from and against all liabilities, claims, actions, lawsuits, damages, losses, costs and expenses (including reasonable attorneys' fees and court expenses) for all injuries to or death of any person, repayment of grant funds, infringement of any patent or copyright, and/or damage to any property occurring, directly or indirectly, from the County's performance or failure to perform under this Agreement, whether or not resulting from the negligence of the County, except to the extent such injuries, infringements or damages result from the City's negligence or willful misconduct. If (and only if) the provisions of RCW 4.24.115 apply to the work and services under this Agreement and any such damages and injuries to persons or property are caused by or result from the concurrent negligence of the County and the City or their respective contractor(s), employees, agents, or representatives, the indemnification of each party applies only to the extent of the negligence of that party, its contractor or employees, agents, or representatives. The County's obligations under this Section shall include, but not be limited to, claims and actions against the City and its officers, employees and agents by a volunteer to or an employee or former employee of the County, and the County expressly waives, as respects the City only and only for the limited purpose stated herein, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other workers' compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claims and actions.

F. The provisions of this Section shall survive and remain applicable to each of the parties notwithstanding any termination or expiration of this Agreement.

SECTION 6. TERMINATION.

A. This Agreement shall take effect upon its signing by both parties. Either party may terminate this Agreement in the event the other fails to perform a material obligation under this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other party. Notice of termination of this Agreement shall be given by the party terminating this Agreement to the other party not less than thirty days (30) days prior to the effective date of termination.

B. Notwithstanding the foregoing and in addition to other remedies it may have at law or equity, if the County properly terminates this Agreement due to a failure of the City to perform a material obligation, the City shall reimburse the County any amounts due to the Puget Sound Clean Air Agency or the DOE as a result of such termination.

C. Neither payment by the County nor performance by the City shall be construed as a waiver of each party's rights or remedies against the other. Failure to require full and timely performance of any provision at any time shall not waive or reduce the right to insist upon complete and timely performance of such provision thereafter.

D. Unless terminated earlier under subsections A or B of this Section 6, this Agreement shall terminate on March 1, 2012.

SECTION 7. RECORD KEEPING

The City shall keep accurate records of all activities and expenditures conducted and incurred under this Agreement and report progress in achieving the performance measures identified by the County.

SECTION 8. AUDITS, INSPECTIONS AND RETENTION OF RECORDS

The DOE, the Puget Sound Clean Air Agency, the County, the State Auditor, and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the City's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine and make excerpts or transcripts from such records, and to make audits of all Agreements, invoices, materials, payrolls, and other matters covered by or related to this Agreement.

All documents, books, papers, accounting records, and other materials pertaining to this Agreement shall be retained by the City for six years from the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the City agrees to maintain same until all such litigation, appeals, claims or exceptions are finally resolved.

SECTION 9. FEDERAL REQUIREMENTS

A. This Agreement is subject to a financial assistance agreement between the County and the Puget Sound Clean Air Agency which includes provisions of the financial assistance agreement between the Puget Sound Clean Air Agency and the DOE. The City shall comply with all applicable federal laws, regulations, policies, procedures and directives, including but not limited to the following, which are attached hereto and incorporated herein by this reference:

1. 10 CFR 600 subpart C, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. The text is available at: http://edocket.access.gpo.gov/cfr_2010/janqtr/10cfr600.200.htm;
2. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. The text is available at: <http://www.whitehouse.gov/omb/circulars/a087/a087-all.html>;
3. The requirements and obligations imposed on the County in Contract Number 2011030 between the County and the Puget Sound Clean Air Agency (Exhibit A).
4. Applicable DOE Third Party Contract Provisions (Exhibit B) to be attached to any vendor agreements.
5. Debarment and Suspension certification (Exhibit C).

B. New federal laws, regulations, policies, procedures and directives may be adopted after the date this Agreement is established and may apply to this Agreement. The City agrees to accept and comply with all applicable laws, regulations, policies, procedures and directives as may be amended or promulgated from time to time during the term of this Agreement.

C. The City shall not perform any act, fail to perform any act, or refuse to comply with any requests by the County which would cause the County to be in violation of any federal law or DOE requirement. The City's failure to so comply with this Section shall constitute a material breach of this Agreement.

D. The County and City acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, City, or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant thereto) pertaining to any matter resulting from this Agreement.

E. The City agrees to extend application of the federal requirements to its subrecipients or contractors, and their respective subcontractors, by including this Section and the related exhibits in each contract and subcontract the City awards under this Agreement financed in whole or in part with Federal assistance provided by DOE. It is further agreed that this Section shall not be modified, except to change the names of the parties to reflect the subrecipient or contractor which will be subject to its provisions.

F. The City acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801, et seq., and U.S. DOE regulations, "Program Fraud Civil Remedies," 10 CFR Part 1013, apply to its actions pertaining to the work under this Agreement. Upon execution of this Agreement, the City certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the DOE-assisted project for which this work is being performed. In addition to other penalties that may be applicable, the City further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the City to the extent the Federal Government deems appropriate.

1. The City also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by DOE, the Government reserves the right to impose the penalties of 18 U.S.C. 1001 on the City, to the extent the Federal Government deems appropriate.
2. The City agrees to include the above two clauses in each contract and subcontract it awards under this Agreement financed in whole or in part with Federal assistance

provided by DOE. It is further agreed that the clauses shall not be modified, except to identify the contractor or subcontractor who will be subject to the provisions.

G. The City agrees to sign Exhibit C to this Agreement, which is incorporated into this Agreement by reference, certifying that it is not currently suspended or debarred from receiving federal energy funding, nor is it proposed for suspension or debarment in accordance with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. Section 6101 note, and U.S. DOE regulations, "Debarment and Suspension," 10 C.F.R. Part 600. If the City is unable to provide a certification, it must submit a complete explanation attached to Exhibit C. If the City lets any contracts or subcontracts to perform work or purchase goods for the work covered by this Agreement, regardless of the amount of such contract or subcontract, the City agrees that it will include all applicable federal provisions in Exhibit B in that contract or subcontract, including Exhibit C to this Agreement, which the contractor or subcontractor must sign to certify they are not suspended or debarred from receiving federal funds.

SECTION 10. SUCCESSION.

This Agreement, together with all exhibits now or hereafter made a part, shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns.

SECTION 11. ASSIGNMENTS.

Neither this Agreement nor any interest herein may be assigned by the City without the prior written consent of the County.

SECTION 12. NOTICE REQUIREMENTS.

Any notice given under this Agreement shall be in writing and given by sending such notice by registered mail, return receipt requested, with postage prepaid, addressed as follows, or at such other address as the party to be notified shall have last directed in writing, or by serving said notice personally.

KING COUNTY: Assistant Director
Department of Transportation – KSC-TR-0811
King Street Center
201 S. Jackson Street
Seattle, WA 98104-3856

CITY: Gina Hortillosa, Project Engineer
City of Kirkland
123 5th Avenue
Kirkland, WA 98033

The effective date of notice shall be the date of personal service or the date of receipt as shown on the return receipt, as applicable.

SECTION 13. AMENDMENT AND EXTENSION.

This Agreement and the exhibits now or hereafter a part of this Agreement shall not be deemed amended in any manner unless such amendment is in writing and signed by a duly authorized representative of each party.

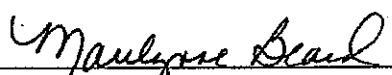
SECTION 14. SEVERABILITY.


If any portion of this Agreement is ruled by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect.

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by a duly authorized representative.

THE CITY OF KIRKLAND

KING COUNTY


Marilynne Beard
Assistant City Manager
City of Kirkland


Ron Posthumus
Assistant Director
King County Department of Transportation

Date: 9/16/11

Date: 9/20/11